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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,770	11/15/2001	Jerry Gordon Enns	902-1-1-1	4338
23898	7590	11/12/2003	EXAMINER	
VINCENT L. CARNEY LAW OFFICE			GREEN, CHRISTY MARIE	
P.O. BOX 80836			ART UNIT	
LINCOLN, NE 68501-0836			PAPER NUMBER	
			3635	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/002,770

Applicant(s)

ENNS, JERRY GORDON

Examiner

Christy M Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is a first office action for serial number 10/002770, entitled Utility Pole Erection, filed on November 15, 2001.

#### ***Response to Election Restriction***

In response to the examiners office action mailed July 16, 2003, applicant has provisionally elected with traverse the claims of Group 1, claims 1-10 drawn to a method of erecting utility poles, and a species elected with traverse of Group A, Figure 3. Upon reviewing the applicant's remarks, the examiner agrees and will examine claims 1-13, which include the apparatus of Group 2.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: within claim 10 it is unclear and not making too much sense, since applicant is stating that a flexible member attached to one section at one end and the other end (of the flexible member) adapted to be connected at different locations upon the flexible member (or otherwise, itself), doesn't make sense. There seems to be some un-clarity in regards to the flexible member, or a limitation may have not been included within the claim somewhere or that particular limitation was overlooked. Clarification is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the telephone pole" in line 3. There is insufficient antecedent basis for this limitation in the claim. Since there this limitation was not previously disclosed within the claim, it therefore lacks antecedent basis.

In regards to claim 10, as stated above, it is unclear and doesn't make too much sense in regards to the limitation of the flexible member being attached to one section (of what?) at one end and has its other end adapted to be connected at different locations on the flexible member (or upon itself?), clarification on this is required.

Claim 12 recites the limitation "the tug arm" in line 2. There is insufficient antecedent basis for this limitation in the claim. Since there this limitation was not previously disclosed within the claim, it therefore lacks antecedent basis.

Regarding claim 13, the phrase "can be" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention or not. Until further clarification is made in regards to the rejections above, the examiner will interpret the claims accordingly.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Crookham.

Crookham discloses an apparatus comprising a hydraulic pump (54) at least one hydraulic cylinder (40,52) at least one bracket (48,50) at least one arm (32) the arm being connected at one end to a piston rod (by 20, or 36) of the at least one hydraulic cylinder (40,52) and at the other end to the bracket (48,50) whereby the sections may be pulled together (figure 5, 11 and 18); and, the bracket (48) and arm (32) has a plurality of cam surfaces (46), a plurality of gripping means (80) for connecting to the bracket (50) on a retraction stroke (by 76) of the hydraulic cylinder (52).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookham, US Patent # 5,794,387 in view of McMullin, US patent # 2,980,456 and further in view of Thirmann, US Patent # 4,362,451.

Crookham discloses the claimed invention a method of erecting utility poles comprising the steps of fabricating a plurality of tubular sections (interpreted to be a pole with a plurality of sections, since Crookham states that the pole can be of other types of poles and bases that are also included within the scope of what the invention

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can be used with-column 5, lines 15-16) of utility poles each having at least a portion tapered (column 4, lines 62-63), the diameter of at least one of the plurality of tubular sections being larger than the diameter of another (12, 14 - figures 8-11), bringing the tubular sections to a site for erection (obvious for the construction of the pole or column to occur (column 1, lines 13-24), pulling the tubular sections together with an apparatus (10, 28) that provides short repeated pulling strokes (by 40 and 52) without manually adjusting the apparatus between strokes (by 54-60), and erecting the utility pole (col. 1, lines 19-20); attaching at least one hydraulic cylinder (52) having a piston rod (obvious and well known in the art that a hydraulic cylinder will have a piston rod of some sort in order to provide differential pressure of the means [i.e. fluid, grease or air] within the hydraulic cylinder), to at least a first section of a utility pole (14 - figure 5), attaching a bracket (74) to a second section of a utility pole (12), connecting the piston rod (obviously within the cylinder) of the cylinder (52) to an arm (32), connecting the arm (32) to the bracket (figure 5 - by 66), pulling the first and second sections (12, 14) together by activating the hydraulic cylinder (40,52) to change the position of the arm (column 5, lines 39-40 and column 6, lines 3-8), and resetting a position of the arm (32) during one of an extension and retraction (column 7, lines 44-56) of the piston rod; resetting the arm (column 7, lines 59-65); moving the arm (32) away from a gripping member (26) and dropping it onto the gripping member (figures 11 and 12).

McMullin teaches that it is known in the art to provide the step of fabricating a plurality of tubular sections of utility poles each having at least a portion tapered (column 2, lines 17-22), it would have been obvious to one having ordinary skill in the

art at the time the invention was made to modify the step of fabricating a plurality of tubular sections of utility poles of McMullin with the pole in Crookham, in order to allow the sections to slide for a limited distance within the adjacent larger section and to provide an improved pole which may be used to push, pull or twist work located at a distance from the ground without danger of the pole collapsing (column 1, lines 60-69).

Thiermann teaches that it is known in the art that a piston rod is gradually retracted by releasing the hydraulic pressure periodically from the hydraulic cylinder to allow the pole, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of pulling the tubular sections together with an apparatus that provides short repeated pulling strokes without manually adjusting the apparatus between strokes of Thiermann with the apparatus of Crookham in order to allow the pole to descend into the hole without manually adjusting it (column 5, lines 17-21).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thiermann, US Patent # 4,362,451.

Thiermann discloses the claimed invention a method of erecting a utility pole comprising the steps of fabricating tubular sections (column 2, lines 23-31 - interpreted to be the same as the tubular sections are formed of specific materials), bringing the tubular sections to a site (obvious when Thiermann states it can be quickly disassembled for cleaning and repair - column 1, lines 55-60 - and also since it is a sectional pole, its obvious this would have to be brought to a site to assemble the pole to assure a pole with better transporting features), pulling the sections together with short repeated



strokes by manually adjusting the position of flexible member (24) connecting a tug bracket (25) and a pull arm (31) and erecting the utility pole (figure 1).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crookham.

Crookham discloses the claimed invention as stated above in claim 11, including a tug bracket (76), a flexible member (80) having one end connected to a tug bracket (76) and the other end, connected to a piston of the hydraulic cylinder (52 by 44).

Crookham does not disclose the length of the flexible member between the piston and the tug bracket being adjustable, it would have been an obvious matter of design choice to make the length of the flexible member between the piston and the tug bracket adjustable since the applicant has not disclosed that the length of the flexible member being adjustable solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the flexible member as interpreted within the reference cited.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.



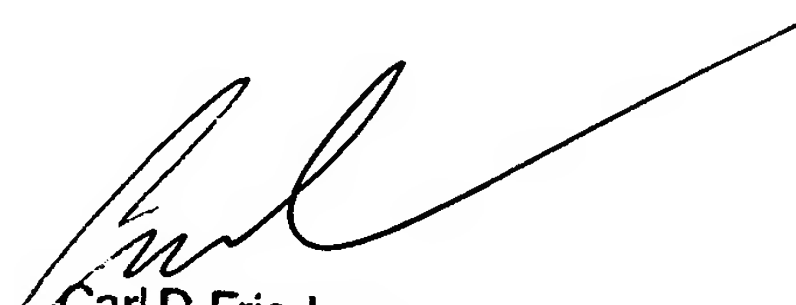
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
cg

November 3, 2003

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600